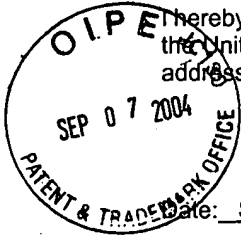


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Date: September 2, 2004

JANET FARR
(Type or print name of person mailing paper)

Janet Farr
(Signature of person mailing paper)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Docket No. AVERP3012US

PATENT

In re Appellant:

Ronald G. Rodick	:	Confirmation No.	6464
	:		
Serial No: 09/915,624	:	Art Unit:	3727
	:		
Filed: July 25, 2001	:	Examiner:	Joseph C. Marek

For: RESEALABLE CLOSURES FOR PACKAGES AND PACKAGES
CONTAINING THE SAME

APPEAL BRIEF

M/S Appeal Brief - Patents
Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313

Dear Sir:

This Appeal Brief is submitted, in triplicate, in the above-identified application in response to the final Office Action mailed April 06, 2004. Appellant's Notice of Appeal was received in USPTO OIPE on July 09, 2004. Accordingly, Appellant's Appeal Brief is timely filed, with no extension of time.

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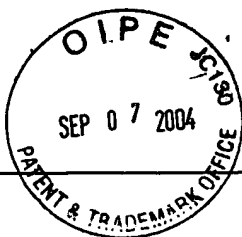


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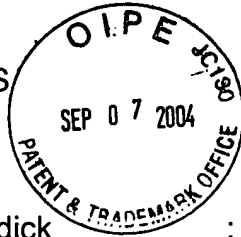
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Commissioner of Patents
P.O. Box 1450
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Dear Sir:

This Appeal Brief is submitted, in triplicate, in the above-identified application in response to the Office Action mailed April 06, 2004, in furtherance of the Notice of Appeal which was received in USPTO OIPE on July 09, 2004.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Avery Dennison Corporation, 150 North Orange Grove Blvd., Pasadena, California 91103.

II. RELATED APPEALS AND INTERFERENCES

Appellant is aware of no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 1-7, 9-20 and 22-35 are presently pending in the Application. All of claims 1-7, 9-20 and 22-35 stand finally rejected for which rejection Appellant brings the present appeal. The Appendix contains a copy of all of claims 1-7, 9-20 and 22-35.

IV. STATUS OF AMENDMENT

A first amendment under 37 C.F.R. 1.116(a) was filed in this application, after which the Examiner issued an Advisory Action. In the Advisory Action, the Examiner entered part of the submission, but refused approval of the proposed drawing change to Fig. 3A. In order to address this issue and to remove the issue from the appeal, Appellant filed a second amendment under 37 C.F.R. 1.116(a) to re-submit this drawing in amended form, on 30 July 2004. This submission resulted in a second Advisory Action relating to the proposed drawing change to Fig. 3A. Appellant filed a third amendment under 37 C.F.R. 1.116(a) to re-submit this drawing in amended form and a corresponding correction in the specification, on 01 September 2004. Thus, at the present time, there is an after-final amendment pending, although the amendment does not contain any claim amendments or arguments relating to patentability.

V. SUMMARY OF INVENTION

Appellant's invention, in one embodiment, relates to a resealable closure for a container. Page 7, lines 14-24. The container has a main body portion and an integral extended body portion foldable over a part of the main body portion, and a releasable enclosure including a release surface and a releasable adhesive having a peel strength up to about 1 pound per inch, in which (a) the release surface is adhered to the main body portion and the releasable adhesive is adhered to the extended body portion, or (b) the releasable adhesive is adhered to the main body portion and the release surface is adhered to the extended body portion. Page 4, lines 13-20 and page 7, lines 3-11.

Figs. 1 and 2 illustrate in perspective embodiments of a container including a resealable closure, and Figs. 9-16 illustrate the container in various stages of use, opening and closing. Figs. 3-5 illustrate an embodiment as described above. Figs. 6-8 illustrate additional embodiments of the claimed invention.

In another embodiment, the container has a first body portion and a second body portion, and the resealable closure includes a release surface and a releasable adhesive having a peel strength up to about 1 pound per inch, in which a first side of the release surface is attached to one of the first body portion or the second body portion by a second adhesive, a second side of the release surface is releasably attached to a first side of the releasable adhesive, a second side of the releasable adhesive is attached to a substrate which comprises another of the second body portion or the first body portion, and the first body portion is a main body portion and the second body portion is an extended body portion foldable over a part of the main body portion. Page 4, line 21 to page 5, line 4. See also, Figs. 3-8.

The releasable closure of the present invention addresses the problems of providing a resealable closure while avoiding the problems of the prior art resealable closures, including problems such as the adhesives becoming contaminated by the container contents, loss of adhesion strength on repeated use, the need for obtrusive devices on the outside of the container to maintain the container closed, the closure means being difficult to use, such as reclosure strips which must be either freed or reattached for use after opening the container. Another continuing problem is the noise associated with re-opening the adhesively closed reclosure device. The noise is often loud and annoying, and may have a sound like woven fabric being violently torn. Consumers and users of the containers have remained unsatisfied because of aesthetically undesirable effects, such as noisy opening and contamination of strong adhesives by the contents of the containers. The presently disclosed and claimed invention addresses such problems. Page 3, line 25 to page 4, line 7.

The resealable closures of the present invention exhibit a secure re-closure of the container. The resealable closures also open easily and quietly, producing little or no objectionable sound. Page 5, lines 5-8. Accordingly, the resealable closures are useful in a variety of applications where releasability and resealability is needed. Page 6, line 26 to page 7, line 2.

VI. ISSUES ON APPEAL

The claims on appeal stand rejected under 35 U.S.C. §§ 102(b) or 103(a). The issues in this appeal are:

- A. APPELLANT'S CLAIMS 1-6, 9-14, 16-20, 22, 24, 25 and 27-33 ARE NOT ANTICIPATED BY, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335.**
 - B. APPELLANT'S CLAIMS 7 and 23 WOULD NOT HAVE BEEN OBVIOUS OVER, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335, IN VIEW OF HOWARD, U.S. PATENT NO. 4,495,318.**
- and
- C. APPELLANT'S CLAIMS 15 and 26 WOULD NOT HAVE BEEN OBVIOUS OVER, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335, IN VIEW OF FREEDMAN ET AL., U.S. PATENT NO. 4,543,139.**

VII. GROUPING OF CLAIMS

Appellant's claims, grouped as follows, stand or fall as follows. Claims 1-4, 9-13 and 16-18 stand or fall together. Claims 5 and 6 stand or fall together. Claim 14 stands or falls alone. Claims 19-22 and 24 stand or fall together. Claim 25 stands or falls alone. Claims 27-30 stand or fall together. Each of claims 31 and 32 stand or fall alone. Claims 33-35 stand or fall together. Each of claims 7, 15, 23 and 26 stand or fall alone.

VIII. ARGUMENT**A. APPELLANT'S CLAIMS 1-6, 9-14, 16-20, 22, 24, 25 and 27-33 ARE NOT ANTICIPATED BY, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335.****1. Argument Applicable to All Pending Claims.**

Claims 1-6, 9-14, 16-20, 22, 24, 25 and 27-33 stand rejected as anticipated by Kobe et al., U.S. Patent No. 5,888,335. In addition, claims 7 and 23, which depend respectively from claims 1 and 19, stand rejected as obvious over Kobe et al. in view of Howard, U.S. Patent No. 4,495,318, and claims 15 and 26, which depend respectively from claims 1 and 19, stand rejected as obvious over Kobe et al. in view of Freedman, U.S. Patent No. 4,543,139. Because all of the rejections ultimately depend on the disclosure of Kobe et al., and Kobe et al. fails to disclose all the limitations of Appellant's claims, in this portion of the Argument, Appellant focuses upon the differences between Kobe et al. and the features of the presently claimed invention shared by all of the pending claims.

Appellant respectfully submits that all of the pending claims patentably distinguish over Kobe et al. and therefore traverses the rejections of all of these claims for at least the following reasons.

The Examiner Failed to State a *Prima Facie* Case of Anticipation

Appellant respectfully submits that the Examiner has failed to state a *prima facie* case of anticipation in setting forth the rejection over Kobe et al. In order to state a *prima facie* case of anticipation, the Examiner must identify every element of the claimed invention, arranged as in the claims under consideration. The Examiner failed to carry this burden, since the statement of the rejection at page 3-4 of the final Office Action fails to identify all of the elements arranged as in the claims.

Rejection for anticipation or lack of novelty requires, as the first step in the inquiry, that all the elements of the claimed invention be described in a single reference. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir.),

cert. denied, 110 S. Ct. 154 (1989). Further, the reference must describe the applicant's claimed invention sufficiently to have placed a person of ordinary skill in the field of the invention in possession of it. *In re Coker*, 463 F.2d 1344, 1348, 175 USPQ 26, 29 (CCPA 1972). To anticipate, every element and limitation of the claimed invention must be found in a single prior art reference, arranged as in the claim. *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). (Emphasis added.)

The statement of the rejection identifies only isolated parts of the claimed invention in Kobe et al., and does not show how Kobe et al. discloses every element of the claimed invention arranged as in Appellant's claims. Specifically, first Kobe et al. fails to disclose a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer; instead Kobe et al. discloses a backing layer which is not a release liner. Second, Kobe et al. fails to disclose a releasable adhesive; instead Kobe et al. discloses a non-tacky fastening layer which is clearly not an adhesive. For these reasons, the rejection is improper and should be withdrawn.

Although the structure disclosed by Kobe et al. appears to have a number of similarities to Appellants' claimed invention, the structure of Kobe et al. differs in this one fundamental way: Kobe et al. uses a self-described "new class of fastener structures" which includes a non-tacky surface applied to a non-tacky substrate. Thus, Kobe et al. simply does not use, disclose or suggest a releasable adhesive as disclosed and claimed in Appellants' application and claims. As noted below, the "non-tacky fastener" of Kobe et al. would be understood as being a cohesive as opposed to an adhesive.

Fig. 5 of Kobe et al. is considered to be the closest to Appellant's claimed invention, despite the fact that it is not a resealable container. In Kobe et al., Figs. 1-3 are tapes, and obviously do not include all of the layers claimed by Appellant. Fig. 4 includes two non-tacky fastening layers 12 and does not include layers corresponding to the layers recited in Appellant's claim 1, despite the Examiner's contention to the contrary in response to

Appellant's arguments. Fig. 4 of Kobe et al. and the disclosure cited by the Examiner are discussed in more detail below in the section on the Examiner's response to Appellant's arguments and amendments.

Side-by-side comparison of the Kobe et al. Fig. 5 structure and the claimed structure shows that there can be no possible anticipation of the claimed structure by that of Fig. 5 of Kobe et al., particularly with emphasis on the layers identified with the double-headed arrows:

Kobe et al. Fig. 5		Claim 1 - Fig. 3
paper 90		extended body portion 30
tacky PSA 93		first adhesive 50
backing 96	↔	release liner 48
non-tacky fastening 12	↔	releasable adhesive 54
target 100		sheet member 52
backup pad		second adhesive 58
		main body portion 14

Even if the positions of the non-tacky fastening 12 and the target 100 in Kobe et al. are switched, there is still no anticipation because the layers and relationships set forth in Appellant's claim 1 are not found in Fig. 5 of Kobe et al. Appellant submits that if, hypothetically, the positions of the backing 96 and the target 100 of the Kobe et al. Fig. 5 are reversed, the resulting structure would not function at all, because then the backing 96 would not adhere to the backup pad and, even if these layers were reversed, the resulting structure still would not anticipate because the layers and relationships set forth in Appellant's claim 1 would not be found in such a hypothetical structure.

In Kobe et al., the backing layer (reference number 31 in Figs. 3 and 4 and reference number 96 in Fig. 5) is described at col. 6, lines 13-30 as:

Backing layer 31 may comprise a scrim, a woven material, a non-woven material, paper, metal foil, or a polymeric material, such as a film. Other materials may also be used as backing layer 31 provided there is the desired level of adhesion to and material compatibility with both fastening layer 12 and mounting layer 17. Specific types of materials that are useful as the backing material 31 include polycarbonate, poly(methylmethacrylate), polypropylene, polyethylene, polystyrene, acrylonitrile-butadiene styrene polymer, and polyester. Other useful materials for backing layer 31 include oriented poly(ethylene terephthalate) film with or without a corona treated surface, cellulose acetate butyrate, cellulose acetate propionate, poly(ether sulfone), polyurethane, poly(vinyl chloride), paper, fabric and metal. The most preferred backing material is a biaxially oriented polypropylene film which has been corona treated in the presence of chlorinated hydrocarbon or a chlorofluorocarbon gas. Such materials are described in U.S. Pat. Nos. 4,844,979 and 4,828,871.

None of these materials could possibly be considered to constitute or suggest use of a release liner as claimed in Appellant's claims. Thus, Kobe et al. fails to disclose or suggest the claimed release liner, and there can be no anticipation thereby.

Kobe et al., describe and define the non-tacky fastening layer so that it is clearly not an adhesive or a releasable adhesive. Kobe et al. does not disclose a releasable adhesive, and for this additional reason, Appellant's claims cannot be anticipated by Kobe et al. The fastening system of Kobe et al. does not employ an adhesive as the "active" or functional fastener.

In the Summary of the Invention, at col. 1, lines 52-57, Kobe et al. discloses:

The invention involves a multi-cycle refastenable contact responsive non-tacky fastener system. The fastening component of the system comprises a contact responsive fastening layer which has a surface that possesses essentially no surface tack, is multiply releasable and refastenable against a non-tacky target surface. (Emphasis added.)

This distinction is further emphasized in the first lines of the Detailed Description, at col. 3, lines 13-15:

The invention relates to a new class of fastener structures that has at least one contact responsive fastening layer which has essentially no surface tack to paper. The contact responsive fastening layer allows multiple fastening and releasing cycles of the fastening layer with a target surface. The target surface may comprise either another essentially tack free surface or it may simply be a non-tacky smooth surface. (Emphasis added.)

Appellant submits that the “new class of fastener structures” is so identified because it is not an adhesive as that term is known and used by those of ordinary skill in the art and in Appellant’s specification and claims, and because Kobe et al. clearly intend to distinguish the material from an adhesive. Appellant submits that a person of ordinary skill would understand the fastener structure of Kobe et al. to be something other than an adhesive.

Kobe et al. does not refer to either part of the disclosed refastenable system as an adhesive, but rather as “a new class of fastener structures”. While other parts of the refastenable system (such as mounting layers) use adhesives and, when Kobe et al. intends to identify these materials as adhesives, Kobe et al. clearly and distinctly does so identify them, the fastening component of the Kobe et al. system clearly does not comprise an adhesive that corresponds to Appellant’s claimed releasable adhesive. Kobe et al. consistently refers to the fastening component of the system by using terms other than “adhesive”, and avoids referring to the fastening component as an adhesive, since it is not an adhesive.

Although Kobe et al. does not use the term “cohesive” to describe the “non-tacky fastener, it appears that the material is a cohesive. Such materials are known in the art, for example, from U.S. Patent No. 6,124,522 which, at col. 5, lines 44-48, discloses:

The top and bottom cover sheets are preferably secured together by treating each with a nonadhesive bonding material (a “cohesive”) that adheres only to other surfaces coated with the same material, but does not adhere to untreated surfaces such as the backing sheet.

This disclosure is followed in U.S. Patent No. 6,124,522 by a discussion of the advantages of using a cohesive material as opposed to an adhesive material (col. 5, lines 48-65). Thus, Appellant submits that a person of skill in the art would understand the “non-tacky fastener” of Kobe et al. to either constitute or be similar to a cohesive, not an adhesive.

Therefore, Examiner failed to identify every element of Appellant’s claimed invention in Kobe et al., thus failing to state a *prima facie* case of anticipation. Having failed to state a *prima facie* case of anticipation, the Examiner’s rejection of Appellant’s claims 1-6, 9-14, 16-20, 22, 24, 25 and 27-33 as anticipated by Kobe et al. should be reversed.

In the Advisory Action mailed July 08, 2004, in response to Appellant’s arguments in the after-final Reply to Office Action, the Examiner merely contended:

Applicant states that Kobe et al. does not have an extended body portion, i.e., the flap. Kobe et al. states in col. 8, lines 38-64, that the invention is used on envelopes, mailers, and pouches. And specifically discusses reclosable office envelopes which are envelopes with a closure flap. The flap is the extended body portion that is claimed.

This argument fails to rebut Appellant’s basic argument that Kobe et al. fails to disclose or suggest either of the release liner as claimed or the releasable adhesive as claimed. Thus, the Examiner has wholly failed to rebut Appellant’s arguments which clearly show that Kobe et al. fails to anticipate or render obvious Appellant’s claimed invention.

Accordingly, Appellant respectfully requests the Board to reverse the Examiner’s rejections of Appellant’s claims.

2. Arguments Applied to the Groupings of Claims.

a. Claims 1-4, 9-13 and 16-18.

In addition to the foregoing reasons, claims 1-6, 9-13 and 16-18 include additional features which, when combined with the features recited in all of the claims, further distinguish over Kobe et al. Claim 1 recites that either “(a) the lower surface of the second adhesive layer is adhered to the main body portion and the upper surface of the first

adhesive layer is adhered to the extended body portion, or (b) the lower surface of the second adhesive layer is adhered to the extended body portion and the upper surface of the first adhesive layer is adhered to the main body portion.” Kobe et al. fails to disclose the claimed arrangement of layers, in which the relative positions of the first and second adhesive layers can be reversed while maintaining the relationship between the remaining layers, in a way that anticipates or would have rendered obvious Appellant’s invention as described in claims 1-6, 9-13 and 16-18.

b. Claims 5, 6, 19-22, 24 and 25.

In addition to the foregoing reasons, each of claims 5, 6, 19-22, 24 and 25 recites that the releasable adhesive is a pressure-sensitive adhesive. As set forth in detail above, the “non-tacky substrate” of Kobe et al., which constitutes “a new class of fastener” is not and cannot constitute a pressure sensitive adhesive. Since pressure-sensitive adhesives are well known in the art, such simply cannot constitute “a new class of fastener”.

Thus, the rejections of claims 5, 6, 19-22, 24 and 25 should be reversed for this additional reason.

c. Claim 14.

In addition to the foregoing reasons, claim 14 recites that “the releasable closure further comprises a second sheet member having an upper and lower surface, wherein the lower surface of the second sheet member is attached to the upper surface of the first adhesive layer, and a third adhesive layer having an upper and lower surface, wherein the lower surface of the third adhesive layer is attached to the upper surface of the second sheet member.”

In setting forth the rejection of claim 14, the Examiner stated only:

Regarding claims 10, 14 and 25, see Col. 5, line 16 where the envelope can be made of paper. See Col. 5, lines 38-44, where the target or release

surface can be either part of the envelope or adhered to the envelope, i.e. with a second adhesive.

This statement of rejection, as applied to claim 14, fails on its face to make even a colorable showing of a *prima facie* case of anticipation by Kobe et al. Thus, the rejection of claim 14 should be reversed for this additional reason.

d. Claims 19-22 and 24.

In addition to the foregoing reasons, claim 19 recites that the releasable adhesive includes an acrylic PSA and has a peel strength up to about one pound per inch, the release liner is a polymer film, and one of the release liner and the releasable adhesive is adhered to the body portion and another of the release liner and the releasable adhesive is adhered to the flap portion.

In setting forth the rejection of these claims, the Examiner again contended that the claimed releasable adhesive is met by the "contact responsive fastener", i.e., the non-tacky fastening layer of Kobe et al., and that the claimed release liner is met by an unspecified "polymer film". Both of these contentions have been rebutted above. The Examiner also referred to Example 17 of Kobe et al., which only prepares two "non-tacky fastener surfaces" (col. 21, lines 34-35). This statement of rejection, as applied to claim 19, fails on its face to state a *prima facie* case of anticipation by Kobe et al. Thus, the rejection of claims 19-22 and 24 should be reversed for this additional reason.

e. Claim 25.

In addition to the foregoing reasons, claim 25 recites that the claimed releasable closure further comprises a second sheet member having an upper and lower surface, wherein the lower surface of the second sheet member is attached to the upper surface of the first adhesive layer, and a third adhesive layer having an upper and lower surface, wherein the lower surface of the third adhesive layer is attached to the upper surface of the second sheet member, the releasable adhesive includes an acrylic PSA and has a peel

strength up to about one pound per inch, the release liner is a polymer film, and that one of the release liner and the releasable adhesive is adhered to the body portion and another of the release liner and the releasable adhesive is adhered to the flap portion.

In setting forth the rejection of claim 25,

Regarding claims 10, 14 and 25, see Col. 5, line 16 where the envelope can be made of paper. See Col. 5, lines 38-44, where the target or release surface can be either part of the envelope or adhered to the envelope, i.e. with a second adhesive.

This statement of rejection, as applied to claim 25, fails on its face to make even a colorable showing of a *prima facie* case of anticipation by Kobe et al. Thus, the rejection of claim 25 should be reversed for this additional reason.

f. Claims 27-30.

In addition to the foregoing reasons, claim 27 recites that the claimed resealable container includes, *inter alia*, the releasable closure which is formed on the front wall member and the flap member, and the releasable adhesive has a peel strength up to about one pound per inch.

In setting forth the rejection of claim 27, the Examiner contended only:

Regarding claim 27, the envelope has the claimed structure.

This statement of rejection, as applied to claim 27 fails to show where in Kobe et al. the allegedly anticipating disclosure is found and fails to make even a colorable showing of a *prima facie* case of anticipation by Kobe et al., since it fails to make any attempt to show exactly what features of the claimed invention correspond to any disclosure of Kobe et al. Thus, the rejection of claim 27 should be reversed for this additional reason.

g. Claim 31.

In addition to the foregoing reasons, claim 31 recites that the claimed releasable adhesive has a peel strength up to about one pound per inch, and that one of the first and the second of the claimed plurality of walls extends beyond the other to form an integral flap, and the integral flap is foldable to bring the release liner into sealing contact with the releasable adhesive.

In setting forth the rejection of claim 31, the Examiner contended only:

Regarding claim 31, the envelope has the plurality of walls and the claimed structure.

This statement of rejection, as applied to claim 31 fails to show where in Kobe et al. the allegedly anticipating disclosure is found and fails to make even a colorable showing of a *prima facie* case of anticipation by Kobe et al., since it fails to make any attempt to show exactly what features of the claimed invention correspond to any disclosure of Kobe et al. Thus, the rejection of claim 31 should be reversed for this additional reason.

h. Claim 32.

In addition to the foregoing reasons, claim 32 recites that the claimed resealable closure is applied to a container having a first body portion and a second body portion, the first body portion being a main body portion and the second body portion being an extended body portion foldable over a part of the main body portion.

In setting forth the rejection of claim 32,

Regarding claim 32, the envelope meets the claimed structure. The adhesive can be on either the body or the flap and the release on the remaining surface.

This statement of rejection, as applied to claim 32 makes essentially no attempt to show where in Kobe et al. the allegedly anticipating disclosure is found, and so fails on its face

to show a *prima facie* case of anticipation by Kobe et al. Thus, the rejection of claim 32 should be reversed for this additional reason.

i. Claims 33-35.

In addition to the foregoing reasons, claim 33 recites a resealable closure for a container, which includes a first adhesive having an upper and lower surface; a first release liner having an upper surface directly attached to the lower surface of the first adhesive; a releasable adhesive having an upper surface directly and releasably attached to the lower surface of the first release liner and having a peel strength of up to about 1 pound per inch; a sheet member having an upper surface attached to the lower surface of the releasable adhesive; and a second adhesive having an upper and lower surface, wherein the upper surface is applied to the lower surface of the sheet member.

In setting forth the rejection of claim 33,

Regarding claim 33, see Col. 5, lines 38-44 where the target or release surface material can be either as part of the envelope or adhered to the envelope, i.e. by the second adhesive.

The cited disclosure at col. 5, lines 38-44 states:

Another useful example is a reusable envelope in which the flap has a target surface material (either as part of the envelope or adhered to the envelope) and the envelope body has a polymer layer selected from the disclosed fastening layer compositions. In each of these examples, the placement of the fastening layer is designed to reduce the contamination of the fastener structure.

This statement of rejection, as applied to claim 33 fails on its face to show a *prima facie* case of anticipation by Kobe et al., since it fails to identify every element of Appellant's claim 33. Thus, the rejection of claim 33 should be reversed for this additional reason.

Claims 34 and 35 depend from claim 33, and provide further distinctions over the cited prior art, in addition to the differences pointed out in the foregoing. With regard to

claim 34, Kobe et al. fails to disclose a structure including, in this order, a second release liner, a first adhesive, a first release liner, a releasable adhesive, a sheet member and a second adhesive, as shown in the figure below. With regard to claim 35, Kobe et al. fails to disclose a structure including, in this order, a first adhesive, a first release liner, a releasable adhesive, a sheet member, a second adhesive and a third release liner, as shown in the figure below.

Claim 34
second release liner 62
first adhesive 50
release liner 48
releasable adhesive 54
sheet member 52
second adhesive 58

Claim 35
first adhesive 50
release liner 48
releasable adhesive 54
sheet member 52
second adhesive 58
third release liner 60

For these reasons, both claim 34 and claim 35 further distinguish over Kobe et al., and are not anticipated thereby. Thus, the presumed rejections of claims 34 and 35 should be reversed for these additional reasons.

B. APPELLANT'S CLAIMS 7 AND 23 WOULD NOT HAVE BEEN OBVIOUS OVER, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335, IN VIEW OF HOWARD, U.S. PATENT NO. 4,495,318.

Claims 7 and 23 stand rejected as obvious over Kobe et al. in view of Howard, U.S. Patent No. 4,495,318. Appellant traverses the rejection of claims 7 and 23 on this ground.

Claims 7 and 23 recite that the releasable adhesive comprises adhesive microspheres. This feature further distinguishes over Kobe et al., which requires that the fastening layer be non-tacky. Addition of the microspheres of Howard to the non-tacky fastening layer of Kobe et al. would render tacky the non-tacky fastening layer, thus

defeating the purpose of the alleged invention of Kobe et al. which is clearly and repeatedly described as a non-tacky fastening layer.

Howard fails to remedy the shortcomings of Kobe et al. Howard relates to inherently tacky, elastomeric, solvent-dispersible, solvent-insoluble, polymeric microspheres that are prepared using a non-ionic emulsifier. Given the disclosure contained therein, Howard fails to cure the deficiencies of Kobe et al. This is because Howard fails to disclose or suggest a structure for a releasable closure. If a person of ordinary skill in the art attempted to combine Howard with Kobe et al., the person would have to use the microspheres of Howard in one of the pressure-sensitive adhesive layers of Kobe et al., not in the non-tacky fastening layer of Kobe et al. To use the microspheres of Howard in the non-tacky fastening layer of Kobe et al. would render the layer tacky, which is directly opposed to the disclosure of Kobe et al. When an asserted combination or modification would destroy or significantly change the way a prior art device operates, the asserted combination or modification is improper and cannot support a case of *prima facie* obviousness. Thus, Kobe et al. teaches away from the asserted combination. *In re Caldwell*, 138 USPQ 243, 245 (CCPA 1963) (reference teaches away if it leaves the impression that the product would not have the property sought by the applicant).

Accordingly, Appellant respectfully submits that the combination of Kobe et al. with Howard would not have rendered obvious Appellant's claims 7 and 23.

Accordingly, the rejection of claims 7 and 23 should be reversed.

C. APPELLANT'S CLAIMS 15 and 26 WOULD NOT HAVE BEEN OBVIOUS OVER, AND HENCE ARE PATENTABLE OVER, KOBE ET AL., U.S. PATENT NO. 5,888,335, IN VIEW OF FREEDMAN ET AL., U.S. PATENT NO. 4,543,139.

Claims 15 and 26 stand rejected as obvious over Kobe et al. in view of Freedman et al., U.S. Patent No. 4,543,139. Appellant traverses the rejection of claims 15 and 26 on this ground.

Claims 15 and 26 recite that the releasable adhesive adheres to the main body portion or to the extended body portion with a peel strength greater than one pound per

inch. This feature simply states that the releasable adhesive adheres to the main body portion or the extended body portion more strongly than it adheres to the release liner.

This feature distinguishes over Kobe et al. for the same reasons set forth about with respect to the base claims, and because Kobe et al. does not disclose a peel strength for the fastening layer 12 to the mounting layer 17. Freedman et al. fails to remedy the shortcomings of Kobe et al. Freedman et al. relates to resealable package closures which have two layers of adhesive joined together at an interface there between. The resealable package closures of Freedman et al. are said to operate by placing the exposed surface of a permanent pressure sensitive adhesive 11 onto a substrate 31, the surface of a second pressure sensitive adhesive 12 remains covered by a release liner until an end-user of the packaging desires to re-close same. Once re-closure is desired, release liner 22 is removed from PSA layer 12 and a portion 32 of the package to be resealed is brought into contact with PSA layer 12. As can be seen from Figures 1E to 1H of Freedman et al., a reseal interface 16 is created between the top surface of PSA layer 12 and portion 32 of the package to be resealed.

Accordingly, Appellant respectfully submits that the combination of Kobe et al. with Freedman et al. would not have rendered obvious Appellant's claims 15 and 26.

Accordingly, the rejection of claims 15 and 26 should be reversed.

With respect to the obviousness rejections over Kobe et al. in combination with either of Howard or Freedman, Appellant respectfully submits that the Examiner failed to state a case of *prima facie* obviousness with respect to Appellant's claims 7, 15, 23 and 26. The Examiner failed to identify all of the limitations of Appellant's claims in the prior art, failed to identify any motivation to select the recited features of Appellant's claimed invention, and failed to show a reasonable expectation of success. In addition to the reasons stated in sections (B) and (C) above, the Examiner failed to show the *prima facie* obviousness of the claimed invention in that the Examiner failed in section (A) above to identify all the elements of the base claims for the alleged anticipation. Having failed to identify all the elements of Appellant's claims, the rejections are improper and should be reversed.

IX. CONCLUSION

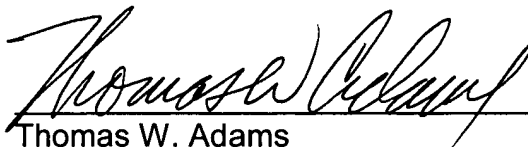
For all these reasons, the rejection of Appellant's claims 1-7, 9-20 and 22-35 under 35 U.S.C. §§ 102(b) and/or 103(a) should be reversed because the Examiner failed to state a prima facie case of anticipation of claims 1-6, 9-14, 16-20, 22, 24, 25 and 27-33 by Kobe et al., and because the asserted combinations of Kobe et al. with either of Howard or Freedman et al. would not have rendered obvious Appellant's claimed invention of claims 7, 15, 23 and 26 at the time the invention was made. Appellant respectfully requests reversal of all of the Examiner's rejections of Appellant's claimed invention under Sections 102(b) and 103(a).

In the event issues remain in the prosecution of this application, Appellants request that the Examiner telephone the undersigned attorney to expedite consideration and/or allowance of the application. Should a Petition for Extension of Time be necessary for the present Appeal Brief to be timely filed (or if such a petition has been made and an additional extension is necessary) petition therefor is hereby made and, if any additional fees are required for the filing of this paper, the Commissioner is authorized to charge those fees to Deposit Account #18-0988, Docket No. AVERP3012US.

Respectfully submitted,

RENNER, OTTO, BOISSELLE & SKLAR

Date: September 2, 2004


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APPENDIX:

CLAIMS ON APPEAL

1. A resealable closure for a container comprising:
 - a container having a main body portion and an integral extended body portion foldable over a part of the main body portion; and
 - a releasable closure comprising:
 - a first adhesive layer having an upper and lower surface;
 - a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;
 - a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;
 - a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and
 - a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,
- wherein (a) the lower surface of the second adhesive layer is adhered to the main body portion and the upper surface of the first adhesive layer is adhered to the extended body portion, or (b) the lower surface of the second adhesive layer is adhered to the extended body portion and the upper surface of the first adhesive layer is adhered to the main body portion.

2. A resealable container as in claim 1, wherein the extended body portion is foldable over a part of the main body portion to bring the release liner and the releasable adhesive into sealing contact.

3. A resealable container as in claim 1, wherein the container is free of a reclosure strip.

4. A resealable container as in claim 1, wherein the releasable adhesive has a peel strength in the range from about 0.4 to about 0.9 pounds per inch.

5. A resealable container as in claim 1, wherein the releasable adhesive comprises pressure sensitive adhesive.

6. A resealable container as in claim 1, wherein the releasable adhesive comprises an acrylic pressure sensitive adhesive.

7. A resealable container as in claim 1, wherein the releasable adhesive comprises adhesive microspheres.

9. A resealable container as in claim 1, wherein the releasable adhesive is applied in a continuous film.

10. A resealable container as in claim 1, wherein the release surface comprises paper with a releasable coating on the paper.

11. A resealable container as in claim 1, wherein the release surface comprises a polymer film.

12. A resealable container as in claim 11, wherein the polymer film is polypropylene.

13. A resealable container as in claim 11, wherein the polymer film is biaxially oriented polypropylene.

14. A resealable closure for a container comprising:
a container having a main body portion and an integral extended body portion foldable over a part of the main body portion; and
a releasable closure comprising:
a first adhesive layer having an upper and lower surface;
a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;
a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;
a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and
a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,
wherein the releasable closure further comprises a second sheet member having an upper and lower surface, wherein the lower surface of the second sheet member is attached to the upper surface of the first adhesive layer, and a third adhesive layer having an upper and lower surface, wherein the lower surface of the third adhesive layer is attached to the upper surface of the second sheet member.

15. A resealable container as in claim 1, wherein the releasable adhesive adheres to the main body portion or to the extended body portion with a peel strength greater than one pound per inch.

16. A resealable container as in claim 1, wherein the extended body portion comprises a fold-over flap.

17. A resealable container as in claim 16, wherein the main body portion comprises a front panel and a back panel, and the extended body portion extends from the back panel.

18. A resealable container as in claim 1, wherein the releasable adhesive is adhered to the main body portion.

19. A resealable closure for a container comprising:
a container integrally formed with a body portion and a flap portion; and
a releasable closure comprising:
a first adhesive layer having an upper and lower surface;
a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;
a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;
a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and

a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,

wherein the releasable adhesive includes an acrylic PSA and has a peel strength up to about one pound per inch,

wherein the release liner is a polymer film, and

wherein one of the release liner and the releasable adhesive is adhered to the body portion and another of the release liner and the releasable adhesive is adhered to the flap portion.

20. A resealable container as in claim 19, wherein the flap portion is foldable over a portion of the body portion to bring the release liner and the releasable adhesive into sealing contact.

22. A resealable container as in claim 19, wherein the releasable adhesive forms a continuous film.

23. A resealable container as in claim 19, wherein the releasable adhesive is an emulsion acrylic tacky microsphere adhesive.

24. A resealable container as in claim 19, wherein the releasable adhesive has a peel strength in the range from about 0.4 to about 1 pound per inch.

25. A resealable closure for a container comprising:
a container having a main body portion and an integral extended body portion foldable over a part of the main body portion; and
a releasable closure comprising:
a first adhesive layer having an upper and lower surface;

a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;

a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;

a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and

a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,

wherein the releasable closure further comprises a second sheet member having an upper and lower surface, wherein the lower surface of the second sheet member is attached to the upper surface of the first adhesive layer, and a third adhesive layer having an upper and lower surface, wherein the lower surface of the third adhesive layer is attached to the upper surface of the second sheet member,

wherein the releasable adhesive includes an acrylic PSA and has a peel strength up to about one pound per inch,

wherein the release liner is a polymer film, and

wherein one of the release liner and the releasable adhesive is adhered to the body portion and another of the release liner and the releasable adhesive is adhered to the flap portion.

26. A resealable container as in claim 19, wherein the releasable adhesive adheres to the body portion or to the flap portion with a peel strength greater than one pound per inch.

27. A resealable container, comprising
integral front wall and back wall members, the back wall member having a flap member extending beyond an end of the front wall member;
a releasable closure comprising:
a first adhesive layer having an upper and lower surface;
a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;
a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;
a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and
a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,
wherein the releasable closure is formed on the front wall member and the flap member, and
the releasable adhesive has a peel strength up to about one pound per inch.

28. A resealable container as in claim 27, wherein the release liner is disposed on the flap portion such that when the flap is folded over, the release liner mates with the releasable adhesive.

29. A resealable container as in claim 27, wherein the back wall member has a first width and the flap member has a second width substantially the same as the first width.

30. A resealable container as in claim 27, wherein the resealable container further comprises at least one side wall member.

31. A resealable container comprising:
a plurality of walls defining an interior space; and
a releasable closure adhered to a first of the plurality of walls, the releasable closure comprising:

a first adhesive layer having an upper and lower surface;

a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;

a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;

a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and

a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,

wherein the releasable adhesive has a peel strength up to about one pound per inch, and

wherein one of the first and the second of the plurality of walls extends beyond the other to form an integral flap, and the integral flap is foldable to bring the release liner into sealing contact with the releasable adhesive.

32. A resealable closure for a container, the container having a first body portion and a second body portion, the resealable closure comprising:

a first adhesive layer having an upper and lower surface;

a release liner having an upper and lower surface, wherein the upper surface of the release liner is directly attached to the lower surface of the first adhesive layer;

a releasable adhesive layer having an upper and lower surface, wherein the upper surface of the releasable adhesive layer is directly and releasably attached to the lower surface of the release liner;

a sheet member having an upper and lower surface, wherein the upper surface of the sheet member is attached to the lower surface of the releasable adhesive; and

a second adhesive layer having an upper and lower surface, wherein the upper surface of the second adhesive layer is attached to the lower surface of the sheet member,

wherein the first body portion is a main body portion and the second body portion is an extended body portion foldable over a part of the main body portion.

33. A resealable closure for a container, comprising:

a first adhesive having an upper and lower surface;

a first release liner having an upper surface directly attached to the lower surface of the first adhesive;

a releasable adhesive having an upper surface directly and releasably attached to the lower surface of the first release liner and having a peel strength of up to about 1 pound per inch;

a sheet member having an upper surface attached to the lower surface of the releasable adhesive; and

a second adhesive having an upper and lower surface, wherein the upper surface is applied to the lower surface of the sheet member.

34. The resealable closure of claim 33, further comprising a second release liner attached to the upper surface of the first adhesive layer.

35. The resealable closure of claim 33, further comprising a third release liner attached to the lower surface of the second adhesive layer.

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